In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:	)	
	)	Adversary Proceeding
ROBERT RAY GREENBERG	)	
(Chapter 7 Case Number 01-42188)	)	Number 02-4095
	)	
Debtor	)	
	)	
	)	
	)	
ROBERT RAY GREENBERG,	)	
JAMES B. WESSINGER, III,	)	
Chapter 7 Trustee	)	
	)	
Plaintiffs	)	
	)	
v.	)	
	)	
REYNOLD H. GREENBERG,	)	
Individually and as Trustee of	)	
The Reynold H. Greenberg, Sr. Trust,	)	
The Dora W. Greenberg Trust, and	)	
The Lois Greenberg Trust	)	
	)	
Defendant	)	

ORDER ON MOTION TO COMPROMISE AND MOTION TO DISMISS

Robert Ray Greenberg ("Debtor") filed a Chapter 7 bankruptcy case on July 25, 2001. On July 22, 2002, Debtor filed an adversary complaint against Reynold H. Greenberg ("Defendant"), individually and as Trustee of The Reynold H. Greenberg Sr., Trust, The Dora W. Greenberg Trust and The Lois Greenberg Trust. Currently before the Court are the Chapter 7 Trustee's Motion to Compromise Claim and Defendant's Motion to Dismiss Adversary Proceeding. A hearing in these matters was held on March 7, 2005.

Pursuant to Federal Rule of Bankruptcy Procedure 7052(a), I issue the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The facts surrounding this adversary complaint are fully detailed in this Court's June 4, 2004, Order denying Defendant's motion for summary judgment and incorporated into this Order by reference. To summarize, Debtor originally filed the current adversary complaint seeking an accounting from his brother, Defendant, who is the trustee of various trusts established under the wills of Debtor and Defendant's parents, Reynold H. Greenberg, Sr. and Dora W. Greenberg, and their sister, Lois Greenberg. The trusts were created in Pennsylvania. In an amended pleading filed on February 13, 2003, Debtor alleged, inter alia, that Defendant violated his fiduciary duty as trustee by diverting, commingling and failing to properly disburse funds from the trusts. The Chapter 7 Trustee, James B. Wessinger, III, filed a motion to intervene as a party plaintiff in the adversary on February 20, 2003, and the motion was granted by an Order filed May 9, 2003.

In response to the adversary, Defendant produced an accounting of the trusts that was prepared by his accountant. Arguing that no issues of material fact remained in the adversary, Defendant filed a motion for summary judgment on February 11, 2004. However, in my June 4, 2004, Order denying Defendant's motion I noted that the accounting, standing alone, is not sufficient to sustain the summary judgment motion in light of the factual issues remaining unrefuted.

As part of July 4, 2004, Order, I requested that the parties provide briefs regarding whether the adversary complaint was within the jurisdiction of this Court. The relevant portion of the July 4 Order reads as follows:

> Debtor was denied a discharge as a result of his perjurious testimony and omissions from his bankruptcy schedules. Ironically, such omissions included Debtor's failure to properly disclose the trusts that are the subject of this adversary complaint and from which he now seeks to collect. *See* Brief in Support of Motion for Summ. J. at 7, Wessinger v. Greenberg (In re Greenberg), Adver. Num. 02-4055 (Bankr. S.D. Ga. June 5, 2002) (Davis, J.) ("Defendant testified at the 11 U.S.C. §341(a) meeting of creditors that no one owed him any money that was collectible."). Debtor's Chapter 7 case remains open nearly two years after he was denied a discharge August 2, 2002. This fact is likely due, at least in part, to the existence of this adversary complaint. However, Debtor here is not invoking a bankruptcy-specific right. Instead, he is seeking damages for Defendant's breach of fiduciary duty (traditionally a state law claim) and Defendant may be entitled to a trial by jury. Further, the trusts that are the subject of this adversary complaint are located in Pennsylvania and governed by Pennsylvania law. Finally, Debtor's ex-wife, Lois Greenberg, has previously undertaken litigation regarding the trusts in the Court of Common Pleas, First Judicial Circuit of Pennsylvania, Civil Trial Division. All of these factors lead this Court to question whether a nexus remains between Debtor's bankruptcy case and his complaint for breach of fiduciary duty such that this Court retains core jurisdiction over the adversary proceeding. *See, e.g.* Continental Nat'l Bank v. Sanchez (In re Toledo), 170 F.3d 1340, 1349 (11th Cir. 1999) ("If the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding[.]"). If the adversary complaint is not a core proceeding, it may be appropriate that I abstain from hearing it pursuant to 28 U.S.C. § 1334(c).

> "Matters concerning the administration of the estate" is a listed example of a core proceeding. 28 U.S.C. § 157(b)(2)(A). Thus, it is noteworthy that the Chapter 7 Trustee has intervened as a co-plaintiff in this adversary complaint in an effort to administer any assets recovered in this litigation. However, his role in this litigation has been limited. Now that discovery has progressed and I have ruled on the motion for summary

> judgment, it is appropriate for the Trustee to evaluate this claim and determine whether a bankruptcy purpose would be served by continued prosecution of this case or whether the claim should be abandoned as burdensome or of inconsequential benefit to the estate. Depending on the Trustee's decision, this adversary complaint may be beyond the jurisdictional reach of this Court. Therefore, I order that the parties submit briefs to this Court by June 23, 2004 on the question of whether the current adversary proceeding remains within 28 U.S.C. § 157(b) and the core jurisdiction of this Court.
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> Order on Motion for Summary Judgment at 8-10, Greenberg v. Greenberg (In re Greenberg), Adv. Num. 02-04095 (Bankr. S.D. Ga. June 4, 2004).

In a brief filed on July 8, 2004, Trustee argued that this Court should retain jurisdiction over the adversary complaint because it involves a matter concerning the administration of the bankruptcy estate. That is, depending on the outcome of Debtor's claim in the adversary proceeding, amounts could be recovered which would be subject to administration by the Chapter 7 Trustee.

The Chapter 7 Trustee has since made a determination that the likelihood of any recovery in the adversary is slim, and that his further participation would be burdensome to the bankruptcy estate. Based on the discovery produced, the Chapter 7 Trustee believes that, while Defendant's record keeping has been deficient, he has made the legally required distributions. Further, the Chapter 7 Trustee said that he estimated the attorney fees incurred in prosecuting the adversary would be at least $10,000.00. Thus, he has agreed to accept $5,000.00 from Defendant in lieu of pursuing the adversary complaint further.

Debtor filed a *pro se* response to Trustee's Motion to Compromise Claim on February 10, 2005, in which he stated that he, "prays that the . . . [Motion to] Compromise Claim be granted and an Order be entered authorizing [the Chapter 7 Trustee] to compromise the Estates Claim[.]" Debtor's former counsel, Gene Geary, characterized Debtor's response by saying that he does not object to the compromise so long as Trustee does not make any further claim against Debtor for amounts that he might recover in a suit against Defendant. When questioned concerning this issue at the March 7, 2005, hearing, the Chapter 7 Trustee replied that he is abandoning any claim he might have against Debtor for amounts recovered from Defendant, and that Debtor is free to independently pursue his action.

Defendant also filed a Motion to Dismiss on February 23, 2005, in which he argued that if Trustee's claim is compromised, the only issues remaining will be those involving Pennsylvania law and that the matter would no longer be within the core jurisdiction of this Court. At the March 7, 2005, hearing, I expressed concern over dismissing the current adversary when there is the possibility that Debtor could be subject to a statute of limitations or similar defense in state court. In response, Defendant's counsel provided me with a letter in which she stated:

> My client is willing to stipulate he will not assert a defense of statute of limitations or laches if the debtor . . . brings an action in the state or superior court of Pennsylvania regarding the subject trusts . . . [M]y client will forego such defenses if an action is brought by debtor within one year of the dismissal of the current adversary proceeding.

> Letter from Dolly Chisholm, Greenberg v. Greenberg (In re Greenberg), Adv. Num. 02-04095 (Bankr. S.D. Ga. March 9, 2005).

Debtor did not file a response to the Motion to Dismiss. However, at the March 7, 2005, hearing he contended that the current adversary remains a core proceeding. Further, Debtor has previously argued that he will incur tremendous costs if the current adversary is dismissed and he is forced to pursue his action out of state.

CONCLUSIONS OF LAW

Motion to Compromise

Pursuant to Federal Rule of Bankruptcy Procedure 9019(a), "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." When faced with a motion to compromise, a court must inquire into the reasonableness of the proposed settlement, determining "whether [it] falls below the lowest point of the range of reasonableness." Cames v. Joiner (In re Joiner), 319 B.R. 903, 907 (Bankr. M.D. Ga. 2004) (Walker, J.) (*citing* In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 758 (Bankr. S.D.N.Y. 1992)). The Eleventh Circuit Court of Appeals has articulated four factors to consider in analyzing a motion to compromise:

> (a) The probability of success in the litigation;
>
> (b) the difficulties, if any, to be encountered in the matter of collection;
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> (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;

> and
>
> (d) the paramount interest of the creditors and a proper deference to their reasonable views[.]
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> Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544, 1549 (11th Cir.1990) (*citing* Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1381 (9th Cir.1986)).

"[A]lthough the court may consider the opinions of the trustee or debtor and their counsel that a settlement is fair and equitable, the judge cannot 'accept the trustee's word that the settlement is reasonable nor may the judge merely rubberstamp a trustee's proposal.'" In re Mattive, No. 93-41908, 1995 WL 17005058, at *2 (Bankr. S.D. Ga. April 26, 1995) (*citing* Nellis v. Shugrue, 165 B.R. 115, 122 (S.D.N.Y. 1994)). However, the court should not conduct a "mini-trial" on the merits of the underlying litigation either. Id.

No objections have been filed to Trustee's Motion to Compromise. Having considered the relevant factors, I find the Chapter 7 Trustee's analysis concerning the value of the claim to be persuasive, and hold that the proposed compromise certainly falls within the "lowest point in the range of reasonableness." Accordingly, the Chapter 7 Trustee's Motion to Compromise is approved.

Motion to Dismiss

In moving to compromise his claim in the adversary complaint, the Chapter 7 Trustee stipulated that he is abandoning his interest in any possible recovery. When a bankruptcy trustee abandons property, it ceases to be property of the estate and reverts back

to the debtor as if no bankruptcy petition had been filed. *See* Dewsnup v. Timm (In re Dewsnup), 908 F.2d 588, 590 (10th Cir. 1990) (*citing* Brown v. O'Keefe, 300 U.S. 598, 602, 57 S.Ct. 543, 546, 81 L.Ed. 827 (1937)). Further, once property leaves the estate a bankruptcy court loses jurisdiction to determine disputes concerning that property, unless the result of the dispute could have some effect on the bankruptcy case. *See* 4 Collier on Bankruptcy ¶ 554.02[3] (15th ed. rev. 2003). *See also* In re Fedpak Systems, Inc., 80 F.3d 207, 214 (7th Cir. 1996) (citations omitted) ("[A] bankruptcy court has jurisdiction over property owned by or in the actual or constructive possession of the debtor . . . [but] jurisdiction lapses when property leaves the estate"); Elscint, Inc. v. First Wis. Fin. Corp. (In re Xonics, Inc.), 813 F.2d 127, 131 (7th Cir. 1987) ("Jurisdiction does not follow the property . . . [when it] leaves the estate."); Reed v. Philadelphia Housing Auth. (In re Reed), 94 B.R. 48, 52 (E.D. Pa. 1988) ("Upon abandonment, the jurisdiction of this court over the property ends."). In this instance, any recovery from Defendant will not inure to the benefit of the estate. Accordingly, I no longer retain jurisdiction over Debtor's claims against Defendant, and the current adversary should be dismissed as a result .

O R D E R

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that the motion of James B. Wessinger, III, Chapter 7 Trustee, to compromise claim is GRANTED.

Because the trusts that are the subject of the current adversary complaint have been abandoned and are no longer property of the estate, IT IS ORDERED that Reynold H. Greenberg has no further obligation to account to James B. Wessinger, III,

Chapter 7 Trustee, or this Court for any of the assets or income of such trusts, and he is free to make any appropriate disbursements to beneficiaries of the trusts. Likewise, Debtor is free to pursue any state law claims he may have against Reynold H. Greenberg with respect to his status as trust beneficiary. Pursuant to the stipulation of Reynold H. Greenberg's counsel, such action will not be subject to any defense based on the statute of limitations, laches or any similar legal principle so long as said action is filed within one year of the finality of this Order.

IT IS FURTHER ORDERED that the motion of Reynold H. Greenberg to Dismiss Adversary Proceeding is GRANTED.

Lamar W. Davis, Jr.
Chief United States Bankruptcy Judge

Dated at Savannah, Georgia

This _____ day of April, 2005.